Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1768

JOSEPH S. WARD, *Appellant,*

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS OF THE COMMONWEALTH OF PUERTO RICO, COMPOSED OF ITS PRESIDENT, GUILLERMO CRUZ GONZALEZ, ITS VICE-PRESIDENT JUAN M. PORTELA SOLER, AND ASSOCIATE MEMBERS PEDRO SANTIAGO RIVERA, MILTON CASTRO, GUSTAVO PADILLA, AND GENARO NEGRON, *Appellee.*

On Appeal from the United States District Court for the District of Puerto Rico (Three-Judge-Court)

MOTION TO DISMISS OR AFFIRM

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Appellee in the above case moves this Honorable Court to dismiss the appeal herein on the grounds hereinafter set forth, or in the alternative to affirm the judgment sought to be reviewed on appeal upon the grounds that it is manifest that the questions upon which the decision of this case rests are so unsubstan-

tial as not to need further argument, and/or the judgment rests on adequate statutory and constitutional principles.

STATEMENT OF THE CASE

Joseph S. Ward, appellant herein, and a resident of New Jersey, filed on February 22, 1973 a complaint for declaratory judgment and injunctive relief under the provisions of Title 42 United States Code, Section 1983, and 28 United States Code, Section 1343. In said complaint appellant alleged, *inter alia,* that section 689(3)(a)[1] of Title 20, Laws of Puerto Rico Annotated violates the due process clause of the Fifth Amendment to the Constitution of the United States insofar as it conditions examination and licensing of an engineer to one year residence in the Commonwealth of Puerto Rico prior to examination.

On November 11, 1974, a Three-Judge-Court was convened, and on July 15, 1975 a Partial Judgment and Opinion was filed and entered holding that the durational residence requirement of one year offended the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. *Ward* v. *Board of Examiners, et al.,* Civil Number 159-73 (D.P.R. July 15, 1975).

The Court below retained jurisdiction in the case at bar to hear the parties on the issue of whether the requirement of actual bona-fide residence offended the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

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[1] The statute, 20 L.P.R.A. § 689, can be found at Appendix F, and is officially reported at pages 226 to 228 of the 1973 Supplement to Volume 4A, Title 20 of the Laws of Puerto Rico Annotated.

On February 12, 1976 a ruling was delivered by the Three-Judge-Court upholding the constitutionality of Section 689 of Title 20 of the Laws of Puerto Rico Annotated insofar as it imposes a requirement of actual bona-fide residence which does not offend the Equal Protection Clause of the Fourteenth Amendment, and on March 15, 1976 judgment was entered accordingly.

On April 29, 1976 appellant filed Notice of Appeal and on June 4, 1976 he filed his Jurisdictional Statement before this Honorable Court.

SUMMARY OF ARGUMENT

I

THE JUDGMENT OF THE STATUTORY THREE-JUDGE-COURT BELOW RESTS UPON PROPER AND ADEQUATE STATUTORY AND CONSTITUTIONAL GROUNDS AND/OR NO SUBSTANTIAL QUESTION IS PRESENTED FOR REVIEW BY THIS HONORABLE COURT.

A.—Power of the State To Regulate the Practice of Professions

It is a well-established principle that the State has the power to regulate the practice of professions and to enforce standards of conduct within its borders.

It follows that a statute or state regulation that has real relation to the suitable protection of the people of the State and is reasonable in its requirements is not invalid though it may incidentally affect interstate commerce, provided it does not conflict with legislation enacted by Congress pursuant to this constitutional authority. *Standard Stocks Toal Co.* v. *Wright,* 225 U.S. 540.

We are before a case where no federal statute is involved, where no intervention with interstate com-

merce is at issue, and in which only the police power of the State to regulate the practice of engineering is questioned. This power to regulate is not only clearly within the scope of a state police power, but also the actual bonafide residence requirement for obtaining a license to practice such profession is reasonable by any standards.

On the other hand, it is also clearly established that no one has a natural, absolute or vested right to practice a profession, and such a right is not included within the privileges and immunities of national citizenship. *Reetz* v. *Michigan,* 188 U.S. 505, 47 L.Ed. 563, 23 S.Ct. 390.

The most universal as well as the most important of all statutory regulations of the practice of any profession is that which requires every person who desires to practice a profession to obtain a license to do so, issued by or under the sponsorship of the State, after a prescribed showing by the applicant of his qualifications to engage in such practice.

This governmental power to legislate on what the State feels is reasonably necessary to protect the interests of the public was upheld in the case of *North Dakota State Board of Pharmacy* v. *Snyder's Drug Stores, Inc.,* decided on December 5, 1975, 42 L.W. 4035, relative to a pharmacy operating license denied to an applicant who is not a registered pharmacist in good standing. Citing with approval the case of *Ferguson* v. *Skrupa,* 372 U.S. 726, where the constitutionality of a state law prohibiting persons other than lawyers from engaging in the business of debt adjusting and debt pooling, this Honorable Court expressed as follows:

"We conclude that the Kansas Legislature was free to decide for itself that legislation was needed to deal with the business of debt adjusting. Unquestionably, there are arguments showing that the business of debt adjusting has social utility, but such arguments are properly addressed to the legislature, not to us. We refuse to sit as a 'Superlegislature to weigh the wisdom of legislation', and we emphatically refuse to go back to the time when courts used the Due Process Clause 'to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought.' Nor are we able or willing to draw lines by calling a law 'prohibitory' or 'regulatory'. Whether the legislature takes for its textbook Adam Smith, Herbert Spencer, Lord Keynes, or some other is no concern of ours. The Kansas debt adjusting statute may be wise or unwise. But relief, if any be needed, lies not with us but with the body constituted to pass laws for the State of Kansas."

Thus, the Commonwealth of Puerto Rico, through its instrumentality, the Board of Examiners of Engineers, Architects and Surveyors, appellee herein, has the power to regulate the practice of engineering, and this power includes the power to require engineers to obtain licenses as a condition of engaging in such practice. *Sember* v. *Oregon State Dental Examiners,* 294 U.S. 608.

B.—The Classification under the Statute Serves a Rationally Legitimate State Purpose

As submitted hereinabove, the State has the power to regulate the practice of professions and to enforce standards of conduct within its border.

The statute under constitutional attack in the case at bar has real relation to the suitable protection of the practice of the profession, in that it assists the Board of Examiners to efficiently pass upon the ability and moral character of an applicant, specifically considering that engineers, architects and surveyors play a major role in the industrial and economic expansion in the Commonwealth of Puerto Rico.

As a matter of fact, several courts have sustained actual residency requirement for admission to the Bar on similar reasoning. *Lipman* v. *Van Zant,* 329 F.Supp. 391, 403 (N.D. Miss. 1971); *Webster* v. *Woffard,* 321 F.Supp. 1259, 1262 (N.D. Ga. 1970).

It thus follows that actual residency does serve a rationally legitimate state purpose in evaluating the applications for engineers' licenses and in safeguarding the interests of the People of Puerto Rico.

C.—The Classification under the Statute Does Not Offend the Equal Protection Clause

In *Williams* v. *Rhodes,* 393 U.S. 23, 21 L.E.2d 241, this Honorable Court established that upon deciding if a law violates the equal protection clause, three essential elements should be considered: (a) the nature of the classification involved; (b) the individual interest affected by the classification; and (c) the alleged interest of the government on behalf of the classification.

We have already analyzed the interest of the government on behalf of the classification, and we respectfully submit that there is no individual interest affected by it. Therefore, we shall analyze only the nature of the classification involved.

At the outset, we are not dealing with a suspect classification based on alienage like in the case of *In Re Griffiths,* 413 U.S. 717 (1973), 37 L.Ed.2d 910. There this Honorable Court held that no discrimination should be exercised against the right to engage in the practice of law or any other lucrative profession. See also *Examining Board of Engineers, Architects and Surveyors* v. *Flores de Otero,* Opinion delivered by this Honorable Court on June 17, 1976, 44 L.W. 4890. *Arias* v. *Examining Board of Refrig. & Air Cond. Technicians,* 353 F.Supp. 857 (D.P.R. 1972).

We are not dealing herein either with the durational residency requirement of one year which the Three-Judge-Court below held offended the equal protection clause of the Fourteenth Amendment. *Ward* v. *Board of Examiners, etc., supra.*

In this connection the case of *Mercer* v. *Hemmings,* 194 So.2d 579 (1967) cited by appellant,[2] and where the Florida Supreme Court declared unconstitutional a statute requiring an applicant to practice in Florida the profession of Accountant, *two years* of residency before taking the examinations, is completely inapposite to the case at bar.

The sole issue involved in the case at bar is the constitutionality of the actual, bona fide residency requirement which the courts have recognized is not subjected to the strict compelling governmental interest equal protection test, but which is to be judicially scrutinized under the rational basis equal protection standard. See *Costa* v. *Bluegrass Turf Service, Inc.,* U.S. D.C. Ky (Three-Judge-Court), Per Curiam Opinion of November 24, 1975, 44 L.W. 2293-2294.

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[2] Page 6 of appellants' brief.

The classification created by the statute under constitutional attack, being rationally related to the suitable protection of the people of Puerto Rico and to the adequate evaluation by the Board of Examiners of applicants' moral character and educational preparation, is permissible under the equal protection clause. *Dandridge* v. *Williams,* 397 U.S. 471, 485 (1970).

D.—Section 689(3)(c) of Title 20 Laws of Puerto Rico Annotated Does Not Abridge Any Rights, Privilege or Immunities under the Provisions of Section 2 of Article IV of the Constitution of the United States

Appellant admits that a State, under its police power can require examinations as a condition for the practice of a profession, but alleges that it cannot require that in order to take such examinations the applicant must be an actual, bona-fide resident of the Commonwealth of Puerto Rico. In support of his contention appellant cites from the case of *Ward* v. *Maryland,* 12 Wall. 418 mentioned in the case of *Blake* v. *McLung,* 172 U.S. 239, both of which are not in point with the issue herein involved.

In the first place, *Ward* v. *Maryland, supra,* refers to a statute requiring traders not being *permanent residents* of the State, to take out licenses for the sale of goods, wares or merchandises. In the case at bar the statute involved plainly and simply requires actual bona-fide residency at the time of taking the examinations as a requisite for obtaining the license to practice as engineers, architects or surveyors.

Secondly, the statute under constitutional attack is not encroaching into any citizen's right to pass into any other state of the Union for the purpose of engaging in lawful commerce, trade or business without molestation.

In *Blake, supra,* the statute dealt with a highly discriminatory practice in which creditors residents of the State had a priority in the distribution of assets in the payment of debts over creditors residents of other countries. Obviously, such discrimination, totally unrelated to any useful and needful governmental purpose, is repugnant to the Rights, Privileges and Immunities Constitutional Clause under Section 2 of Article IV of the Constitution of the United States.

Now, in analyzing the meaning of the words privileges and immunities this Honorable Court made it very clear in *Blake, supra,* that it is safer and more in accordance with the duty of a judicial tribunal to leave said meaning to be determined in each case upon a view of the particular rights asserted and denied therein, subject, of course, to such restraints as the government may justly prescribe for the general good of the whole. As this Honorable Court expressed therein at page 254:

> "We must not be understood as saying that a citizen of one state is entitled to enjoy in another State every privilege that may be given in the latter to its own citizens. These are privileges that may be accorded by a State to its own people in which citizens of other States may not participate except in conformity to such reasonable regulations as may be established by the State. For instance, a State cannot forbid citizens of other States from suing in its courts, that right being enjoyed by its own people, but it may require a non-resident although a citizen of another State, to give bond for costs, although such bond be not required of a resident. Such regulation of the in-

ternal affairs of a State cannot reasonably be characterized as hostile to the fundamental rights of citizens of other States. So, a State may, by rule uniform in its operation as to citizens of the several States, require *residence* within its limits for a given time before a citizen of another state who becomes a resident thereof shall exercise the right of suffrage or become eligible to office. It has never been supposed that regulations of that character materially interfered with the enjoyment by citizens of each state of the privileges and immunities secured by the Constitution to citizens of the several states. . ."

See also *La Tourette* v. *McMaster, Insurance Comm. of the State of South Carolina,* 248 U.S. 465 (1919), where this Honorable Court construed a statute providing that only such persons shall be licensed to act as brokers to represent citizens for the placing of insurance, as are residents of the State, as requiring *local residence,* as distinguished from citizenship. Such statute was held within the police power and therefore not depriving such citizen and resident of another state of liberty or property, in violation of the Fourteenth Amendment, or discriminating against him in violation of Section 2, Article IV of the Constitution of the United States.

In other words, what the Constitutional Clause clearly pursues is to preclude a state from regulating business or professions by giving its own citizens *essential* privileges denied to citizens of other states. But through the statute in the case at bar, the government is simply exercising its legitimate police power of regulating the requirements of all applicants to obtain a license to practice a profession.

E.—The Decision of the Court Below Was Clearly Correct

Obviously, the Court below, in delivering its ruling upholding the constitutionality of the actual bona-fide residence requirement, considered that the controversy in the case at bar is set in the context of efforts of the government of the Commonwealth of Puerto Rico equitably and lawfully to properly and adequately pass upon the ability and moral character of an applicant. This being a valid interest, the appropriate test to be used is that of a rationale basis for the legislation. *Dandridge* v. *Williams, supra.*

It should be emphasized that the cases have directed their constitutional attack at durational residency requirements exclusively without implying any view of the validity of the residency requirement itself. *Shapiro* v. *Thompson,* 394 U.S. 618. In fact, the right of the States to require residency in order to determine the eligibility to obtain a license to practice a profession, or to determine the eligibility to obtain any other right or privilege, for that matter, has been left untouched and, as a matter of fact, has been upheld. *Smith* v. *Davis,* 330 F.Supp. 1225, *Webster* v. *Wofford, supra, Lipman* v. *Van Zant, supra.*

In *Lipman,* as in the case at bar, the Court invalidated that portion of the statute which required residency for a period of one year preceding the date of the application, but it upheld the constitutionality of the statute's requirement for residency at date of application.

The important factor in this line of decisions is that the courts have distinguished, just as this Honorable Court has done in *Shapiro* v. *Thompson,*[3] *supra, Dunn*

[3] At 638, Note 21: "We imply no view on the validity of waiting period or residence requirements determining eligibility to vote,

v. *Blunstein,* 405 U.S. 330, and *Memorial Hospital* v. *Maricopa Country,* 415 U.S. 250 (1974), between durational residency requirements and the bona-fide residency requirements which the statute may impose, and the different treatment and result which follows from the distinction.

CONCLUSION

The constitutional attack made by appellant to Section 689(3)(a) of Title 20, Laws of Puerto Rico Annotated is totally unsubstantial because obviously it has no merits. *Ex parte Poresky,* 290 U.S. 30, 54 S.Ct. 3, 78 L.Ed. 152 (1933).

WHEREFORE, appellee respectfully submits that the appeal in this case should be dismissed, or in the alternative, the judgment of the Court below should be affirmed.

In San Juan, Puerto Rico, this 28th day of July, 1976.

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eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interest on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel."